

Pamela A. McKay (SBN 7812)
McKAY LAW FIRM, Chtd.
 3295 N. Fort Apache Road, Suite 150
 Las Vegas, NV 89129
 Phone: 702-835-6956
 Fax: 702- 835-6957

Attorneys for Defendant
AMERICAN SAFETY INDEMNITY COMPANY

Ramiro Morales (SBN 7101)
 David Astengo (SBN 11045)
MORALES FIERRO & REEVES
 600 S. Tonopah Drive, 3rd Floor
 Las Vegas, NV 89106
 T: (702) 699-7822
 F: (702) 699-9455

Attorneys for Plaintiff
NORTHERN INSURANCE COMPANY OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEVADA

MARYLAND CASUALTY COMPANY,
 NORTHERN INSURANCE COMPANY OF
 NEW YORK

Plaintiffs,

vs.

AMERICAN SAFETY INDEMNITY
 COMPANY, licensed to do business in the
 State of Nevada,

Defendant.

CASE NO. 2:10-cv-02001-MMD-PAL

STIPULATED JUDGMENT WITH RIGHT
 TO APPEAL AS BETWEEN NORTHERN
 INSURANCE COMPANY OF NEW YORK
 AND AMERICAN SAFETY INDEMNITY
 COMPANY

Defendant, AMERICAN SAFETY INDEMNITY COMPANY (“Defendant”) and
 Plaintiffs NORTHERN INSURANCE COMPANY OF NEW YORK and ASSURANCE
 COMPANY OF AMERICA (“Plaintiffs”)¹ hereby stipulate to a judgment on the following:

WHEREAS, on July 9, 2010, Plaintiffs filed this action in Clark County District Court,

¹ Pursuant to a Stipulation Regarding Correction Of Name of Plaintiff and Order (Doc. # 61)executed by the Court on November 20, 2013 and filed on November 21, 2013, Assurance Company of America was substituted for Plaintiff Maryland Casualty Company as a Plaintiff and one of the real parties in interest in this action with respect to Plaintiffs’ claims against Defendant. American Safety Indemnity Company does not agree with this Stipulation.

Case No. A-10-620513-D, seeking equitable contribution of defense fees and costs and indemnity paid on behalf of the Parties' mutual insured, Laird Whipple Concrete ("Laird"), to defend and settle the following underlying actions:

a. *Devore et al. v. Coleman Homes, Inc.*, Clark County District Court Case No. A445099; and

b. *Tapatio I HOA v. Wigwam Associates, LP*, Clark County District Court Case No. A515312 (collectively "Underlying Actions").

WHEREAS, on November 16, 2010, Defendant removed the Action to Federal Court (Doc. #3).

WHEREAS, on March 16, 2012, Plaintiffs filed a Motion for Partial Summary Judgment against Defendant on the Duty to Defend the Underlying Actions (Doc. #24 through Doc. # 24-41).

WHEREAS, on April 10, 2012, Defendant filed its Opposition to Plaintiffs' Motion for Partial Summary Judgment (Doc. #27 through Doc. # 27-17).

WHEREAS, on May 1, 2012, Plaintiffs filed a Reply in support of its Motion for Partial Summary Judgment (Doc. #30 through 30-7).

WHEREAS, on March 13, 2013, the Court issued an Order granting Plaintiffs' Motion for Partial Summary Judgment (Doc. #35).

WHEREAS, on August 23, 2013, Parties entered into and filed with the Court a Stipulation Regarding Partial Settlement and Trial on Limited Issues Regarding Defense of Underlying Actions (Doc. # 50) (hereinafter "The Stipulation regarding Partial Settlement and Trial".)

WHEREAS, on October 9, 2013, the Court entered a Stipulation and Order Regarding the Parties' Resolution of Certain Claims (Doc. #57), which is based on both The Stipulation regarding Partial Settlement and Trial (Doc. # 50) and the Parties' Settlement Agreement Regarding Resolution of Indemnity dated October 4, 2013 and provides:

a. Issues regarding the duty to indemnify for the Underlying Action are resolved. The Parties will proceed to trial only on limited issues which remain unresolved,

1 which are Defendant's obligation to reimburse Plaintiffs for the defense fees and costs which
 2 Plaintiffs paid on behalf of Laird in defending the Underlying Actions.

3 b. The amounts owed, if any, regarding the duty to defend the Underlying
 4 Actions.

5 c. The first cause of action for declaratory relief will proceed to trial
 6 regarding an equitable share of sums Plaintiffs paid in defending Laird in the Underlying Actions
 7 and amounts owed by Defendant.

8 d. The second cause of action for contribution will only proceed to trial
 9 regarding an equitable contribution for Plaintiff's defense of Laird in the Underlying Actions.

10 e. The third cause of action for indemnity will only proceed to trial regarding
 11 equitable indemnity for Plaintiffs' defense of Laird in the Underlying Actions.

12 f. The fourth cause of action for breach of contract will not proceed to trial
 13 in any manner.

14 g. Defendant's defenses, if any, regarding Plaintiffs' claims relating to the
 15 defense obligation, are reflected in the Parties' Joint Pre-Trial Report (Doc. #40).

16 WHEREAS, pursuant to the Court's Order during the September 3, 2013, status
 17 conference, Plaintiffs and Defendant filed an Amended Joint Pretrial Statement and Order (Doc.
 18 #58).

19 WHEREAS, in lieu of a trial on the remaining issues in the case regarding the amounts
 20 owed, if any, by Defendant to reimburse Plaintiffs for the defense fees and costs which Plaintiffs
 21 paid on behalf of Laird in defending the Underlying Actions, the Parties hereby stipulate to a
 22 judgment amount regarding the second and third causes of action as set forth in Doc. # 57
 23 pursuant to the Court's Order on Plaintiffs' Motion for Partial Summary Judgment (Doc. # 35),
 24 in the total amount of Twenty-Five Thousand Dollars and No Cents (\$25,000.00) on behalf of
 25 Plaintiff Northern Insurance Company of New York only.

26 WHEREAS, the Plaintiffs hereby stipulate that they will dismiss Assurance Company of
 27 America as a Named Plaintiff from this action upon the Parties executing this Stipulated
 28 Judgment.

WHEREAS, the Parties shall bear their own costs and attorney fees.

WHEREAS, Defendant American Safety Indemnity Company intends to appeal this Stipulated Judgment from the Order granting Plaintiffs' Motion for Partial Summary Judgment that Defendant had a duty to defend Laird with respect to the Underlying Actions (Doc. #35).

WHEREAS, the Parties hereby stipulate that by entering into this Stipulated Judgment that neither Plaintiff Northern Insurance Company of New York nor Defendant American Safety Indemnity Company waive their right to appeal the judgment based on the Order granting Plaintiffs' Motion for Partial Summary Judgment on Defendant's Duty to Defend (Doc. #35) as to whether Defendant had a duty to defend Laird in the Underlying Actions.

WHEREAS, the Parties hereby acknowledge and agree all other claims and defenses contained herein are abandoned and that the October 4, 2013 Stipulation referenced herein remains in full force and effect.

IT IS SO STIPULATED.

McKAY LAW FIRM, CHTD.

MORALES FIERRO & REEVES

By: /s/ Pamela A. McKay
PAMELA A. McKAY (SBN 7812)
3295 N. Fort Apache Rd. #150
Las Vegas, NV 89129
Attorneys for Defendant
AMERICAN SAFETY
INDEMNITY COMPANY

By: /s/ Ramiro Morales
RAMIRO MORALES (SBN 7101)
600 S. Tonopah Drive, 3rd Floor
Las Vegas, NV 89106
Attorneys for Plaintiff
NORTHERN INSURANCE COMPANY
OF NEW YORK

IT IS HEREBY ORDERED, ADJUDGED and DECREED THAT this action is decided and this judgment is to be entered by the Clerk of this Court according to the stipulation of the Parties set forth above in the total amount of TWENTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$25,000.00) in favor of Plaintiff NORTHERN INSURANCE COMPANY OF NEW YORK and against Defendant AMERICAN SAFETY INDEMNITY COMPANY.

DATED: February 2, 2014


U.S. DISTRICT COURT JUDGE